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## STATEMENT REGARDING THE INCIDENT OF APRIL 6, 2019

Thank you for being here today. I want to take this time to provide some context and explanation with regard to these cases. I want to emphasize one thing before I get into more detail: at no time was it my goal or desire for either of these young individuals to be criminalized or incarcerated. I wanted them to take responsibility for their actions.

It is unethical for any lawyer, but, in my opinion, especially the prosecutor, to discuss the evidence in a pending criminal case. The media should not influence the resolution of a case – in most cases that's not fair to the defendant and is prejudicial his or her ability to receive a fair trial.

Now that both criminal proceedings are closed, I am ethically free to address certain important issues with the public. The purpose of being here today is to speak the truth. It may not fit the published narrative, but the truth is the truth and I will not compromise my integrity to assuage the well-intentioned but misinformed community members who were told a story that was not based in reality.

First, I want to emphasize that this is not in any way a criticism of the judicial decisions made in either proceeding. We respect the courts' judgments while acknowledging it is certainly part of the judicial system that we will not always agree with those rulings.

New York's highest court has held that a dismissal of criminal charges in furtherance of justice is not an acquittal of the charges – it leaves the question of guilt or innocence unanswered. In fact, the County Court decision states that there is substantial evidence that the defendant was guilty of misdemeanors.

My responsibility as District Attorney is to seek justice. That means that I am duty bound to evaluate every case and use my professional judgment to try to do the right thing. I want to be clear that the decisions that I made in this case are mine and mine alone. In making those decisions I spoke to many people who had many different perspectives. I listened to all of them. Ultimately, in trying to find a just result, the more information I can gather the better equipped I am to make the right decision. And the “right decision” is invariably one that will leave some people happy and some people angry. No one, not the police, not the mayor or common council, and not the public, dictated my decisions in this case. I take full responsibility my decisions.

This was an extremely complicated case, factually and legally. Initially, the charges are drafted by the police. The original charges against the young woman were two felonies, Attempted Assault 2<sup>nd</sup>, and two misdemeanors. It is not uncommon that the prosecutor will modify the charges and I was not convinced that the felony charges were legally appropriate

in the beginning. So I decided to reduce the charges against the young woman from felonies to misdemeanors.

After much more consideration, I was not convinced that the felony charges should have been reduced so I decided that the grand jury should make that determination. A grand jury notice was sent to the defense attorney on May 16<sup>th</sup> and the grand jury heard the case on May 30<sup>th</sup>. The defendant had two weeks' notice of the grand jury presentation.

While it was clear that the young woman punched a police officer, it was not as clear whether the facts supported the felony charges upon a strict application of the law. The grand jury is the best way to determine whether there is legally sufficient evidence to support a charge. I honestly did not know what the grand jury's determination would be. I provided additional legal instructions in the interest of giving the defendant every benefit of the doubt. Ultimately the grand jury voted in favor of the felony charges. That determination is significant because the grand jury is an independent factfinding body made up of lay people from around the county.

Ultimately, after more debate and legal research, I decided that the felony charges should be dismissed in the interests of fairness.

There are many people who believe that punching a police officer while he is in the course of his duties is utterly unforgivable and should be punished severely. Make no mistake, one of these two young people did just that. She punched a police officer in the

back of the head, more than once, and then scratched a second police officer's face as he tried to get her under control.

It is not reasonable or justifiable to interfere with a police officer if you, in your own personal judgment, determine that the officer is doing something you believe to be wrong. Interfering with a police investigation, punching a police officer, and fighting in public are illegal – and the public should be aware that this case is not going to deter the police from doing their job in a professional and respectful manner in the future.

In trying to arrive at a fair resolution in this case, I had the idea that restorative justice might work to actually improve the relationship between the community and law enforcement. Restorative justice is a process that allows everyone involved in a case to engage with each other with the goal of coming to a mutual understanding. It's a process, similar to mediation, that requires honesty and a sincere desire to listen to the point of view of the other side. That form of resolution would require all participants to set aside their legal posturing and accept responsibility for their conduct. Mediation requires honesty and good faith. It doesn't work if the participants don't tell the truth.

One of the major issues in this case from the beginning was the complaint that an older man committed a sexual assault and was then treated favorably by the police. This is the same individual who the police witnessed being struck after a running start. At first, the claim was that the older man groped the female who was arrested in this case. You can find

that claim in many of the stories published by the press and posted on social media. Then the narrative changed. A different young woman was allegedly groped.

The public demanded an investigation into the alleged sexual assault. My office investigated that claim. If there had been any evidence whatsoever to support charges for inappropriate sexual contact, we would have filed charges against the older male. No one ever came forward and said that they had been groped. Without that evidence, it's impossible to file charges. On several occasions, my investigator attempted to speak with the young lady who was alleged to be the victim of the groping. He went to her house three times. She refused to cooperate. My investigator interviewed the older male by telephone – he resides in California. In open court, I asked for the defendant's cooperation in the investigation of the groping. Her attorney emphatically refused. All the while, both these young people knew from the very beginning that NO groping ever took place. No one was sexually assaulted. This is not my opinion, it is the sworn testimony of both the young man charged in this case and his brother. They testified that they never saw the older man grope anyone or assault anyone, contrary to narrative that had been repeated and published in the media.

When I first learned that the allegations of a sexual assault were fabricated, I was shocked. The alleged sexual assault was a critical part of the argument that the defendants' actions were justified. The claim of a sexual assault was pervasive, and it was the basis for a larger accusation that the police were racially biased in arresting the two young people while

letting the older man go. Simply put, the claim of a groping was a clear misrepresentation that was repeated over and over when the young people involved knew it was not true.

When I learned about the false claim, I knew that restorative justice was not a realistic option. Good faith and honesty, and acceptance of responsibility were essential components of a potential mediation. Without them, the process would have been hollow and meaningless.

Despite the defendants' refusal to take responsibility for their actions and the deception that they perpetrated upon the community, I wanted to give them the opportunity to resolve the case without permanent consequences. All they had to do was accept responsibility for their actions and the records would have been sealed completely. No probation or specific conditions. Neither individual was in jeopardy of going to jail or of being criminalized by the judicial system.

Now that the process is over, it is unfortunate that neither of these young people ever took responsibility for his or her actions.

To conclude, my decisions in this case were intended to cause a just result. Was justice accomplished? I don't know. That depends on who you ask. But I am more than willing to engage in the difficult conversations that need to take place in order for our community to learn from this experience and I look forward to the community forum that the mayor promised would take place.